(1) S.B. Civil Writ Pet. NO. 2278/03
(MADAN LAL Vs. STATE OF RAJ. & ORS.)

(2) S.B. CIVIL WRIT PETITION NO. 2279/03
(RAM LAL VS. STATE OF RAJASTHAN & ORS.)

(3) S.B. CIVIL WRIT PETITION NO. 2280/03
(DEVILAL VS. STATE OF RAJ. & ORS.)

(4) S.B. CIVIL WRIT PETITION NO. 1067/05
(TRILOK CHAND VS. STATE OF RAJ. & ORS.)

Writ Petitions under Article 226 and 227 of the Constitution of India.

ORDER

Date of order : 07.11.06

HON'BLE MR JUSTICE BHAGWATI PRASAD

Mr. Manish Shishodia for the petitioner.
Mr. K.N. Joshi for the respondents.

BY THE COURT:

The present controversy involved is centered around a Notification issued by the State Govt. annexure/1 dated 5.10.96 published in Rajasthan Gazette on 15.10.1996. The petitioners in these writ petitions claimed to be the tenants of the Trust and they claim that the exemption granted to the Trust is wrong because

neither any notice was given to the petitioners nor they have been provided any opportunity of hearing. These two ingredients are not made out in Sec. 2(3) of the Act of 1950 and, therefore, requirement of notice and hearing is not a procedural requirement before issuance of the Notification. By its Notification, the State Govt. has exercised its powers under Section 2(3) of the Rajasthan Premises (Control of Rent and Eviction Act, 1950) (in short referred to as the `Act of 1950'). While exercising powers under Sec. 2(3) of the Act of 1950 the State Govt. had granted exemption to the respondent No. 3 Pooran Dasji Ki Bagichi Trust, Bhilwara. The point of law is common, in these four writ petitions and, therefore, they are being decided by this common judgment.

The factual matrix of writ petition No. 2279/03 Ram Lal Vs. State of Rajasthan have been taken into consideration.

The claim of the petitioner is that they are the tenants of the trust and the trust has filed a suit for eviction. Since the Trust has been exempted by the provisions of the Act of 1950, the tenants have deprived of the benefit available to the other tenants under the Act of 1950. Before issuance of the Notification no prior notice was given by the State Govt. to the petitioners, no opportunity of hearing has

also been afforded to the petitioners before taking away valuable right vested in them. It has further been contended that the state Govt has exercised its powers conferred under Sec. 2(3) of the Act of 1950 without application of mind. The Act of State Govt. suffers from the legal malafides.

The respondent State contested the writ petition and has stated that there being allegations of malafide, no officer, authority has been impleaded as party to answer the allegation of Malafides. The exemption is governed by the set standards. Fortifying reasons by virtue of which the exemption was granted, the State Govt. has averred as under: -

> "That in reply to the contentions made in paras nos. 9 and 10 of the writ petition, it is submitted that an application was made on behalf of the trust for grant of exemption under Section 2 (3) of the Act then the Collector directed the Tehsildar, Bhilwara for effecting enquiry in the matter and the Tehsildar, Bhilwara submitted his report making it clear that the papers submitted by the trust were verified by the books of account etc and they have been found correct. Such information was sent by the District Collector, Bhilwara to Asstt. Legal Remembrancer, Urban Development and Housing Department, Jaipur vide communication dated 24.2.96. It is also pertinent to submit here that at that time the collector did not express his opinion as to whether exemption should be granted to the trust or not and

> in such circumstances, the Collector was requested to send his comments vide communication dated 26th April, 1996. Thereafter, the Collector sent his recommendation and making it clear vide his communication dated 22nd June, 1996 that account submitted by the trust have been found correct and so also a recommendation was made by the District Collector, Bhilwara that exemption is required to be granted under Section 2(3) of the Act in favour of the trust. Thereafter, the matter was considered and vide notification dated 5th Oct., 1996, which has been published in the Gazette dated 15th Oct., 1996 has been issued granting exemption in favour of the trust. In such circumstances, it is clear that the notification dated 5th Oct., 1996 has been issued after due inquiry and full application of mind."

The Trust has also filed a detailed reply and it has been submitted on behalf of the Trust that Trust is the charitable Trust and its entire income is being utilized for charitable purposes. The activities of the Trust are centered around maintenance and development of the charitable institutions. The Trust has been granted exemption in 1996 and challenge has been made in 2002. The delayed challenge is liable to be negated on the grounds of delay and latches.

It has not been established by the petitioners that the trust is not a religious and charitable trust. There is also a claim by the respondent Trust that the petitioners have not said that the rental

income is not realized for the purpose for which the trust was created and thus, if the State Govt. has granted exemption, it cannot be said that the exemption granted by the state Govt. is not in accordance with the provisions of the Act of 1950. The petitioner has relied on various decisions which are reported in various journals. The petitioner has relied on the judgment of the Hon'ble Supreme Court reported in 1985(1) SCC 290 S.Kandaswamy Chettiar V/s State of Tamil Nadu & Anr., 1985 (1) SCC 395 M/s S.M. Mahendra & Co. and Ors v/s State of Tamil Nadu and Anr., 1988 (2) RLW 68 Mohd. Yamin V/s State of Rajasthan & Ors., 1990 (1) 518 Champa Lal Gopi Kishan Saboo Trust V/s State of Rajasthan & Ors.

I have considered the rival submissions. The requirement of Sec. 2 (3) was the satisfaction of the State Govt. to grant exemption in public interest. The exemption is available to the charitable institution and religious institution. The provisions of law i.e. Sec. 2 (3) of the Act of 1950 is produced herein under:-

> "2(3): The State Govt. if it is satisfied that it is necessary or expedient so to do in public interest may, by notification in the Official Gazette, exempt from all or any of the provisions of this Act any premises owned by any educational, religious or charitable institution the whole of the income derived for which is utilized for the purpose of the institution".

From the bare reading of Section 2(3) it is evident that the satisfaction of the State Govt. is on the necessity or expediency in the public interest. The State Govt. has made inquiry in this regard as is evident from the reply filed. When the satisfaction of the State Govt. has been arrived at by looking on the necessity and expediency of the respondent trust then the notification has been issued. Once the Notification is issued then there is a presumption that the State Govt. has inquired into the necessity and expediency, unless otherwise strongly rebutted. The allegations of the petitioner in writ petition are not sufficient to rebut the presumption. So much so,the petitioners have not even gone to the extent of establishing that the income realized by the trust is not being used for charitable and religious purposes. The Trust has unequivocally established that the income was utilized for the purpose for which the trust was created.

The petitioners have failed to lay down its factual foundation in the writ petition to establish that the trust has not been functioning in the manner and for the purpose for which it was created. In that view of the matter, the trust has rightly been granted the exemption by the State Govt. by issuing the notification.

The challenge to the notification annexure/1 is thus, not sustainable and hence negated. The challenge to Annexure/1 thus fails. Accordingly, the writ petitions are dismissed as being meritless.

(BHAGWATI PRASAD), J.

ns.